

**Glaziers, Architectural, Metal and Glass Workers,
Local Union No. 558 and BSC Steel, Inc. and
Ironworkers Local Union No. 10, AFL-CIO.**
Case 17-CD-348

April 30, 1996

**DECISION AND DETERMINATION OF
DISPUTE**

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

The charge in this Section 10(k) proceeding was filed on November 21, 1995, by BSC Steel, Inc. (BSC or the Employer), alleging that the Respondent, Glaziers, Architectural, Metal and Glass Workers, Local Union No. 558 (Glaziers Local 558 or the Glaziers), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Ironworkers Local Union No. 10, AFL-CIO (Ironworkers Local 10 or the Ironworkers). A hearing was held on December 15, 1995, before Hearing Officer D. Michael McConnell.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

BSC Steel is a State of Missouri corporation engaged as a steel erection contractor in the construction industry. During its last fiscal year, the Employer purchased and received goods and services valued in excess of \$50,000 from sources located outside the State of Missouri and sold and shipped goods and services valued in excess of \$50,000 directly to customers located outside the State of Missouri.

The parties present at the hearing stipulated, and we find, that BSC is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Glaziers Local 558 and Ironworkers Local 10 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

The work in question is the installation of a handrailing system at the H & R Block Corporation in Kansas City, Missouri. The glass handrail system was de-

livered to the jobsite at about 7 a.m. on November 17, 1995.² Members of Glaziers Local 558 began picketing the job at about 8:30 a.m. that day with signs that advised that the Employer³ did not pay the area wage standard.⁴ The Employer removed the glass from the jobsite that same afternoon and the picketing ceased. On November 20, the Employer instructed the ironworkers to begin installing the handrail system at night to avoid problems with the picketing Glaziers. Employees represented by the Glaziers were at the jobsite installing window glass and a glass curtain wall for another contractor on the project. When the Glaziers' employees reported for work on the morning of November 21, and found that work on the handrail system had been performed the night before, they ceased work and the picketing resumed. Employees represented by other unions, except for the Ironworkers, declined to cross the picket line.

In early November, Kenneth Bishop, superintendent for the general contractor, J.E. Dunn, had a conversation with Paul Fisher, a Glaziers foreman and member of the Glaziers Union, about the installation of the handrailing system. Fisher indicated that he was concerned that the ironworkers were working with glass, which is glaziers' work. When the picketing began, Fisher participated in the picketing. In a conversation on November 21, Bishop asked Fisher what he was doing; Fisher replied that the ironworkers were unloading glass, which was glaziers' work, and that he was not going to put up with it.

On that same day (November 21), John Simms, business agent for Glaziers Local 558, told Bishop that the ironworkers were installing the glass which was glaziers' work. Simms also talked to Robert Bartley, erector manager for BSC, and told him that the Employer had ironworkers doing glaziers' work. Simms asked Bartley to sign up with the Glaziers Union but Bartley declined. Simms then told Bartley that the picket line would be removed if the ironworkers performed the handrailing work at night. The picketing ceased that afternoon and did not resume.

B. Work in Dispute

The work in dispute is the installation of the glass handrailing system at the H & R Block Corporate Expansion project located in Kansas City, Missouri. The work involves welding or bolting metal guides to the floor of the structure and then attaching the glass railings. The railings are then bolted to the metal guides.

² All dates are in 1995, unless indicated otherwise.

³ The picket signs identified Bratton as the employer involved in the dispute. Bratton is the company that supplied the handrail systems to BSC and has never had any employees on the job. We find that the picketing was aimed at BSC.

⁴ The total package of wage rates and benefits for the Glaziers and the Ironworkers is virtually identical.

¹ Although the attorney for Glaziers Local 558 was served with a notice of the hearing, no representative of that Union appeared at the hearing.

A handrail of some other material, such as wood or metal, is then attached to the top of the glass railing.

C. *The Contentions of the Parties*

The Employer maintains that this work has always been performed by employees represented by the Ironworkers Union. It is undisputed that the Employer has a current collective-bargaining agreement with the Ironworkers, but not with the Glaziers. The initial stage of the work involves securing the metal tracks to the floor, work that the Glaziers Union does not claim. Even after the glass is installed, there is often a need to make adjustments in the frame as it is being attached to the structure. The Employer argues that it is more efficient to have a crew of ironworkers, working continuously, performing the entire job, rather than to assign the work to two crafts and have two crews working intermittently. The Employer also argues that, although this type of work does not occur regularly, the evidence shows that it is usually assigned to the ironworkers and that is predominately true in the area.

Ironworkers Local 10 agrees with the Employer's position. As noted above, no representative of the Glaziers Union attended the hearing so its position, at least for the record, is unknown.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have no agreed-upon method for the voluntary adjustment of the dispute.

In the conversation between Fisher (a Glaziers member and foreman) and Bishop (general contractor superintendent), Fisher related his concerns about ironworkers working with the glass. Fisher told Bishop that working with glass was glaziers' work. When the picketing began Fisher participated in picketing. In a subsequent conversation, Fisher told Bishop that he was not going to put up with ironworkers performing glaziers' work.

On November 21, in a conversation between Simms (the Glaziers' business agent) and Bishop, Simms stated that ironworkers were installing the glass in the handrailing system, and that was glaziers' work. Simms also talked to Bartley, BSC's erection manager, and told him that the Employer had ironworkers doing glaziers' work. After Bartley declined Simms' offer to sign up with the Glaziers Union, Simms told Bartley that the picketing would cease if the ironworkers performed the handrailing work at night. The picketing ceased that day and did not resume.

The parties present at the hearing stipulated, and we find, that there is no voluntary method of resolving the competing claims for the disputed work.⁵

We find reasonable cause to believe that the Glaziers violated Section 8(b)(4)(D), and that, as stipulated by the parties present at the hearing, there exists no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J.A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certification and collective-bargaining agreements

There is no evidence that either Ironworkers Local 10 or Glaziers Local 558 has ever been certified as the exclusive collective-bargaining representative of any of the Employer's employees. BSC, however, has a current collective-bargaining agreement with the Ironworkers covering the disputed work, but not with the Glaziers. Accordingly, the agreement between BSC and the Ironworkers favors an award of the disputed work to employees represented by the Ironworkers.

2. Employer preference

BSC stated a preference for having the disputed work awarded to employees represented by the Ironworkers Union. Accordingly, this factor favors an award of the disputed work to employees represented by the Ironworkers.

3. Employer past practice

BSC has a past practice of assigning the disputed work to employees represented by the Ironworkers. Accordingly, this factor favors an award of the disputed work to employees represented by the Ironworkers.

⁵ Although there is no current agreement between the Glaziers and the Ironworkers to resolve jurisdictional disputes, at one time there was a national agreement between the International presidents to resolve such disputes. That national agreement was repudiated by the Glaziers on March 1, 1974. Similarly, on August 10, 1983, the Glaziers abrogated a local agreement that had also been designed to resolve disputes.

4. Area practice

BSC presented evidence that the area practice is to assign the installation of the handrail system, including the glass panels, to employees represented by the Ironworkers. Accordingly, we find that this factor favors an award of the disputed work to employees represented by the Ironworkers.

5. Relative skill

The record shows that both groups of employees possess the necessary skill to perform the work in dispute. Accordingly, this factor does not favor an award of the work to either group of employees.

6. Economy and efficiency of operations

BSC contends that it is more economical and efficient to assign the disputed work to employees represented by the Ironworkers. This assignment avoids the bottlenecks and dead time that would occur by utilizing ironworkers to install the base and top of the handrailing system, with the intervening work by the glaziers to set the glass panels in place. The work of setting the glass panels in place requires no specialized skill that would warrant the intrusion of a second craft into an integrated installation process. Accordingly, we find that these factors favor an award of work to the employees represented by the Ironworkers.

7. Arbitration award

On June 9 and 13, 1986, Arbitrator Frank J. Murphy conducted a hearing between the Ironworkers and the Glaziers to resolve the issues concerning the installation of tempered glass on the handrails at the Commerce Bank Building located in Kansas City, Missouri. In his decision issued on June 27, 1986, the arbitrator awarded the work in dispute to employees represented by the Ironworkers.

The Board, in resolving competing claims to the same work in a 10(k) proceeding, will examine an arbitrator's work assignment award, to determine if the award is based on the appropriate criteria. The Board, however, is not required to defer to an award by an arbitrator.

The arbitrator of the 10-year-old award referred to here emphasized that his "decision is limited to the two jobs in question (at the Commerce Bank Building) and is not a general determination of the assignment of the type of work" in dispute.

We find, therefore, that the arbitration decision relied on by the Ironworkers is not relevant to our deter-

mination of the proper assignment of the work in dispute herein. Accordingly, this factor does not favor an award of the disputed work to either group of employees.

Conclusion

After considering all the relevant factors, we conclude that the employees represented by the Ironworkers are entitled to perform the work in dispute.

We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference, employer past practice, area practice, and economy and efficiency of operations.

In making this determination, we are awarding the work to employees represented by the Ironworkers, not to that Union or its members.

Scope of Award

The Employer has requested that the Board issue a broad award on behalf of the Ironworkers covering the work in dispute in view of the Glaziers' repeated picketing of projects where similar work is performed. Before the Board will make such an award, it must be shown that: (1) the work in dispute has been a continuous source of controversy in the relevant geographic area and is likely to recur; and (2) the offending union has a proclivity to engage in further unlawful conduct in order to obtain the work in dispute. See *Laborers (Paschen Contractors)*, 270 NLRB 327, 330 (1984); *Electrical Workers IBEW Local 104 (Standard Sign)*, 248 NLRB 1144, 1147-1148 (1980). There is no indication in this record that Glaziers Local 558 is likely to engage in unlawful conduct in pursuit of work similar to the work in dispute at future projects. Accordingly, the award is limited to the controversy at the jobsite that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of BSC Steel, Inc., represented by Ironworkers Local Union No. 10, AFL-CIO, are entitled to perform the work of installing glass handrailing systems at the H & R Block Corporate Expansion project located in Kansas City, Missouri.

2. Glaziers, Architectural, Metal and Glass Workers, Local Union No. 558 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force BSC Steel, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Glaziers, Architectural, Metal and Glass Workers, Local Union No. 558 shall notify the Regional Director for Region 17 in writing whether it will refrain from forcing the Em-

ployer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.